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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/318,870	05/26/1999	ANDREW H. SEGAL	3378/80489	2018
29933	7590	05/25/2004	EXAMINER	
PALMER & DODGE, LLP KATHLEEN M. WILLIAMS 111 HUNTINGTON AVENUE BOSTON, MA 02199			ART UNIT	PAPER NUMBER

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/318,870

Applicant(s)

SEGAL, ANDREW H.

Examiner

Michail A Belyavskiy

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

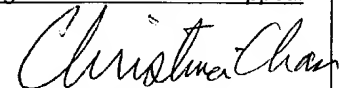
The Appeal Brief filed on 25 March 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Appellant has improperly introduced a new reference (Pardoll, D) that is not of record into Appeal Brief. MPEP, Section 1207 makes it clear that "a new amendment, new affidavit, or other new evidence must be submitted in a paper separate from the appeal brief. (emphasis added)

It is noted that 37 CCFR 1.92(c) (7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection are separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. It is noted that there is no arguments under Grouping of Claims and Argument items of the Appeal Brief why the claims subject to the same rejection are separately patentable.



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